



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1995

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-1158

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35947.

The Texas Department of Insurance (the "department") received two open records requests for a certain video that you contend may be withheld from the public pursuant to the Open Records Act, sections 552.101 and 552.103(a) of the Government Code. One of the requests is from the mother of the child whose medical condition is discussed in the video.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). You say that the requested "information relates to an open investigation of Prucare for alleged violations

of state insurance laws, which could culminate in an administrative contested case against Prucare, as a party." You also say that "the attorney responsible for reviewing this matter has determined that the requested information is directly related to anticipated litigation."

Although we believe you have established that litigation is reasonably anticipated here, we do not believe you have provided this office with the necessary information to demonstrate that the requested information relates to that litigation. While we generally do not require the department to explain in its request for a ruling to this office the details of its investigations of specific insurance companies, or which laws may have been violated, we usually are able to make that determination upon a review of the records, so that we can thereby determine how the requested information relates to the litigation. In this instance, you have not explained, nor is it clear after viewing the video, how the video relates to the anticipated litigation. Moreover, it appears that a Prucare representative was present at the videotaping. Accordingly, we conclude that the department may not withhold the video from required public disclosure based on section 552.103 of the Government Code.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

While common-law privacy may protect an individual's medical history, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). This office has determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982).

We believe the information on the video is protected from required public disclosure based on section 552.101 in conjunction with the common-law right to privacy. Consequently, you must withhold the video from public disclosure.

However, we believe the mother of the child whose medical history was discussed on this video stands on different footing than does a member of the public. Section 552.023 of the Government Code grants a person or a person's authorized representative

a special right of access, beyond the right of the public, to records that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interest. Consequently, the department may not deny the mother access to the video. Gov't Code § 552.023(b); *see* Open Records Decision No. 481 (1987).¹

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 35947

Enclosure: Videotape

cc: Mr. Greg Googan
Reporter
KVUE-TV
P.O. Box 9927
Austin, Texas 78766-0927
(w/o enclosure)

Ms. Shelly Jensen
Route 3, Box 165
Taylor, Texas 76574
(w/o enclosure)

¹We note that the prohibition against selective disclosure found in section 552.007 of the Government Code does not apply when a governmental body releases confidential information.